Supreme Court, U.S.
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No. 92-1657

In The

Supreme Court of the United States

October Term, 1992

CITY OF EAST PROVIDENCE,

Petitioner,

v.

ANN M. ROBINSON,

Respondent.

On Petition For A Writ Of Certioriari To the Supreme Court Of Rhode Island

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Rhode Island Supreme Court correctly held that the former mayor of East Providence violated the First Amendment when he failed to reappoint respondent to her non-policy making position as Police Constable solely because she supported his electoral opponent.

2. Whether the Rhode Island Supreme Court correctly held that the City of East Providence violated Respondent's Fourteenth Amendment rights to notice and a hearing before removing her from her position as Police Matron.

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INTRODUCTION

The facts of this case represent a classic example of political retaliation against a city employee in violation of well-established law. Specifically, the Rhode Island Supreme Court concluded that Edward Doyle, the former Mayor of East Providence, violated the First Amendment when he refused to reappoint respondent to her non-policymaking position as Police Constable solely because her sister had unsuccessfully run against petitioner for political office. The Rhode Island Supreme Court also held that the City's decision to dismiss respondent from her position as a Police Matron without notice or a hearing violated the due process guarantees of the Fourteenth Amendment.

Both of these holdings are fully consistent with this Court's decisions. Accordingly, petitioner is unable to identify any conflict with the holdings of lower courts or issues of national significance presented by this case. Instead, petitioner's argument amounts to nothing more than a disagreement with the factual findings below. Those findings, however, are not properly before the Court. Likewise, the ruling by the Rhode Island Supreme Court regarding respondent's employment status under state law is final and binding on this Court. Consequently, there is no basis for plenary review and the petition for certiorari should be dismissed.

STATEMENT OF FACTS

The Petition misstates certain critical facts that are necessary in understanding the decision below. The relevant facts are that Ann Robinson was hired as a Police Constable on September 11, 1973 (not on June 7, 1982, as petitioner mistakenly alleges), and so served continuously through February 4, 1985. Mrs. Robinson was reappointed annually and had an exemplary work record as a Police Constable.

In 1980 the East Providence City Council implemented a patronage system in which it gave each of five council persons fifteen appointments of police constables, in addition to the separate list of constables annually reappointed who had served at least 10 years. Thus each council person could appoint or reappoint many more than 15 persons to serve as police constables. The City Council continues this patronage practice and has now expanded to 20 the number of police constables each Council member may appoint.

In the fall of 1984 Mrs. Eleanor Foeri, respondent's sister, ran for the Ward 4 council seat held by Edward J. Doyle. Respondent and her husband (Jim Robinson had served continuously as a police constable since 1967) had been long-time supporters of Councilman Doyle but decided not to support his campaign against Mrs. Foeri. After the election Mr. Robinson called Mr. Doyle to request that he and his wife be reappointed and was told that "other people helped me this time." App. 5.

In addition to her duties as a Police Constable, respondent was appointed as a police matron in April of 1983 and so served along with Eileen Benson, Avis Prior,

Virginia Iacono, Virginia DeFreitas, and Nancy Cahir. She was paid by the City at the rate of $8.00 per hour and was abruptly terminated on February 4, 1985, after Mayor Doyle failed to reappoint her to the Police Constable position. The City continued to use Matrons through April of 1986. Mrs. Robinson was never given notice or a hearing prior to her removal as a matron.

After hearing sixteen witnesses and reviewing approximately thirty exhibits, the trial court made the following findings of fact:

1. Mr. Robinson was appointed as a Police Constable on 5/22/67 by the City Manager and was reappointed every year without advocation. App. 5.

2. Mr. Robinson was a long-time neighbor of Mr. Doyle. App. 5.

3. Both Mr. and Mrs. Robinson assisted Mr. Doyle in his campaigns for the City Council with displays of signs and also with the conducting of a coffee hour. App. 5.

4. As the years progressed, Mr. Doyle consistently nominated both Mr. and Mrs. Robinson as Police Constables. App. 6.

5. Mr. and Mrs. Robinson were inactive in Mr. Doyle's 1984 campaign because plaintiff's sister, Eleanor Foeri, ran against Mr. Doyle. App. 5.

6. After Mrs. Foeri lost the election, Mr. Robinson called Mr. Doyle to inquire whether he and his wife would be reappointed and was told by Mr. Doyle that "other people helped me this time." App. 5.

7. When the next opportunity arose for Mr. Doyle to renominate Mrs. Robinson as he had repeatedly done in the past, he failed to do so. App. 6.

8. At the February 4, 1985, Council meeting, Mr. Doyle nominated 14 out of 15 allotted individuals and excluded Mrs. Robinson. App. 6.

9. Mr. Doyle's decision not to reappoint Mrs. Robinson was politically motivated and the result of patronage practices on his part. App. 6.

10. Mrs. Robinson worked as a police matron from 1983 until February 4, 1985, for the sum of $8.00 per hour. App. 7.

11. The City failed to provide Mrs. Robinson with written notice of its intention to remove her as a police matron stating the cause for said removal. App. 7.

12. The City did not provide Mrs. Robinson with notice or a hearing prior to her removal as a police matron. App. 7.

REASONS FOR DENYING THE WRIT

Based on these findings, the trial court held, and the Rhode Island Supreme Court affirmed, that Ann Robinson's First and Fourteenth Amendment rights were violated. The petitioner fails to point out any inconsistencies by the Rhode Island Courts with federal constitutional law. There is no conflict alleged with the holdings of any Circuit Courts of Appeal or other state courts. There is no issue of national significance. At best, petitioner disagrees with the decision below. Under this Court's rules, that is simply not a basis for certiorari.

FIRST AMENDMENT ISSUE

A. The First Amendment Holding

The legal principles governing this case are clear and well-settled. On three separate occasions, this Court has ruled that the First Amendment prohibits political retaliation against public employees because of their political views or party affiliation unless those employees occupy policymaking positions. The decision below represents a straightforward application of these undisputed principles.

In *Elrod v. Burns*, 427 U.S. 347, 359 (1976), the Court noted that conditioning public employment on continuing support for those holding political power "unquestionably inhibits protected belief and association." In *Branti v. Finkel*, 445 U.S. 507, 516 (1980), the Court reconfirmed that the retaliatory dismissal of public employees because of their political views violates the First Amendment because of the "coercion of belief that necessarily flows from the knowledge that one must have a sponsor in the dominant party in order to retain one's job."[1] And, in *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), the Court held that the rationale of *Elrod* and *Branti* is not limited to retaliatory dismissals but also applies to decisions about hiring, promotion, transfers, and recall.

Here, the trial court found as a matter of fact that respondent was not reappointed to her position as a

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[1] *Branti* also clarified the reference to policymaking positions in *Elrod* by noting that the critical question in any case is whether "party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S. at 518.

police constable in the East Providence because she supported a political opponent of the former mayor. It is equally clear from the record that respondent's job as a police constable was neither a policymaking position nor a position for which party affiliation or political support represents a bona fide occupational qualification. Given these findings, the decision by the Rhode Island courts that respondent's First Amendment rights were abridged is not only supported, it is compelled, by both *Elrod* and *Branti*.

Indeed, the only halfhearted effort that petitioner makes to distinguish this Court's political patronage cases is to argue that respondent was not dismissed from her job as a police constable, she was simply not reappointed. However, precisely the same argument was made and rejected in *Rutan*. As this Court noted in *Rutan* with regard to a plaintiff who had not been hired: "If Moore's employment application was set aside because he chose not to support the Republican Party, as he asserts, then Moore's First Amendment rights have been violated. 497 U.S. at ___.

In the present case, we are no longer dealing with allegations in a complaint but with findings of fact by a trial judge after a hearing that have been upheld by the state's highest court. If anything, the failure to reappoint respondent to her position as police constable constitutes even a greater First Amendment violation than the failure to hire a new employee without any expectation of continued employment.

The decision below is thus plainly correct. It is also unexceptional in its legal holding. Petitioner may disagree with the outcome, but that is not a basis for granting certiorari. In the absence of any other credible argument for plenary review, the petition for certiorari should be denied.

B. The Due Process Holding

Petitioner's due process argument is equally unavailing. Petitioner does not and cannot dispute the legal proposition that public employees may not be dismissed from their jobs without notice and a hearing if either a property or liberty interest is involved, *see, e.g., Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 542 (1985), and that the question of whether or not a property interest exists in a particular job is primarily a matter of state law, *see, e.g., Board of Regents v. Roth,* 408 U.S. 564, 577 (1972).

Instead, petitioner argues that the City of East Providence has never employed police matrons and that, in any event, respondent's appointment as a police matron was unlawful. The first contention flies in the face of a contrary factual finding by the trial court. The second contention was rejected by the courts below, whose interpretation of state law is of course binding on this Court. *See, e.g., R.A.V v. City of St. Paul,* 505 U.S. at ___, 120 L.Ed.2d 305, 316 (1992).

Petitioner's effort to seek certiorari on either of these two grounds is therefore not only meritless, it borders on the frivolous.

CONCLUSION

For the above-stated reasons, Respondent prays that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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